



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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APR 05 2012

OFFICE OF THE  
REGIONAL ADMINISTRATOR

The Honorable Michael C. Geraghty  
Attorney General  
State of Alaska  
Department of Law  
1031 West 4<sup>th</sup> Avenue, Suite 200  
Anchorage, Alaska 99501-5903

Dear Attorney General Geraghty:

Thank you for your letter dated, March 9, 2012, expressing the State of Alaska's concerns regarding the EPA's Bristol Bay Watershed Assessment. Your letter raises a number of concerns about the process the EPA is employing to develop the Watershed Assessment and raises questions about its legality. The letter requests that the EPA respond to your legal and process concerns in writing. You have also asked for a meeting between the EPA and the State on technical questions and issues regarding the Watershed Assessment.

It is very important to me, personally, and to the agency as a whole, that the EPA work with the State on the Bristol Bay Watershed Assessment and understand your concerns. From the beginning of the draft assessment process, the EPA has reached out to the State to discuss our approach to better understanding the Bristol Bay resource and to seek your input and involvement at every step along the way. We understand how important this resource is to Alaska, the people of Alaska, and to the cultural, commercial, industrial, recreational and environmental interests associated with Bristol Bay. From the outset, we have stated that our goal is to conduct this scientific Watershed Assessment in close coordination with federal, State, and tribal organizations and in an open, transparent, and public manner.

As you are aware, in May 2010, the EPA was asked by nine tribes, two commercial fishing organizations, the Bristol Bay Native Corporation, and others to initiate a Clean Water Act, Section 404(c) process to prohibit or restrict discharges of dredged or fill materials associated with metallic sulfide mining within the headwaters of the Bristol Bay watershed. Two Alaska tribes, other tribal entities, the Pebble Limited Partnership, and the Governor of Alaska requested that the EPA not take action under Section 404(c) and instead use the standard permitting and environmental review processes to evaluate proposed mining operations in the Bristol Bay watershed. Since that time, we have received many additional requests seeking EPA action. In order to give due consideration to these conflicting requests, the EPA decided to collect and evaluate available scientific information on Bristol Bay fisheries and their vulnerability to large scale mining development. The Watershed Assessment will provide important data that will help inform future decision-making with respect to Bristol Bay-- whether it be use of our authority under Section 404(c) or another action-- as we work with the State and others to ensure the sustainability of the fisheries.

The EPA is performing the Watershed Assessment under our CWA Section 104 authorities that direct the Administrator to "establish national programs for the prevention, reduction and elimination of pollution," and as part of the program will "...conduct and promote the coordination and acceleration of research, investigations...and studies relating to the causes, effects, extent, prevention, reduction and

elimination of pollution....” according to 33 U.S.C. § 1254 (a)(1). In carrying out these actions, the EPA Administrator is also authorized to “collect and make available through publications and other appropriate means, the results of and other information, including appropriate recommendations by [her] in connection therewith, pertaining to such research and other activities...” according to 33 U.S.C. § 1254 (b)(1). As discussed previously, the purpose of the Watershed Assessment effort is to research and better understand the unique resources in the Bristol Bay watershed and the effects of pollution from large-scale development on such resources, including effects on water quality and salmon fisheries. The Watershed Assessment clearly falls within the obligations and authorities provided in CWA Section 104. The Watershed Assessment is similar to other environmental assessments EPA has conducted to evaluate the impacts of past actions or estimate the potential impacts of future actions.

The rest of the legal concerns expressed in your letter relate to consequences that might flow from a future decision by the EPA to initiate or finalize a Section 404(c) action. I want to be clear that the Watershed Assessment is not a regulatory action, and it will not have any legal consequences. EPA has not initiated any regulatory action under 404(c), or any other authority. The EPA regulations establish a clear process with multiple opportunities for stakeholder involvement, and in the event a 404(c) action is initiated, the EPA would of course follow these required procedures. Many of your legal concerns would only be relevant and can only be addressed in the context of a specific regulatory action. Should the EPA move forward with a 404(c) action, we will address your legal concerns at that time.

You also expressed several technical concerns about the Assessment. The EPA would like to meet with you, as you have suggested, to discuss these concerns. The EPA intends to share the draft Bristol Bay Watershed Assessment with the public in early May, and to begin public meetings on the Watershed Assessment in early June. There will also be a public meeting in Anchorage in August with the Peer Review Panel. I will be at those meetings and would like to arrange a time that week in June and again in August if necessary for the EPA to meet with you and other State officials to discuss your concerns and any other issues regarding the draft Bristol Bay Watershed Assessment. You will also have the opportunity to convey your concerns directly to the Peer Review Panel at the public meeting so that the members will consider them as they deliberate. Richard Parkin, our Management Lead on the Bristol Bay Assessment and Dianne Soderlund, our Alaska Operations Office Director, are available to meet with you and your staff to discuss your technical concerns before the draft document is released in May. Please contact Rick Parkin at (206) 553-8574 to arrange any or all of these potential meetings.

In closing, the EPA appreciates and recognizes the interest that the State of Alaska has in our work on the draft Bristol Bay Watershed Assessment. We look forward to an ongoing dialogue with you and other State officials as that work continues.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dennis J. McLerran', with a stylized flourish at the end.

Dennis J. McLerran  
Regional Administrator